

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND LOZELL BANKSTON,

Defendant-Appellant.

UNPUBLISHED

September 13, 2007

No. 271676

Wayne Circuit Court

LC No. 06-004204-01

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of unarmed robbery, MCL 750.530, and possession of less than 25 grams of heroin, MCL 333.7403(2)(a)(v). He was sentenced as an habitual offender, third offense, MCL 769.11, to prison terms of 6 to 30 years for the robbery conviction and one to eight years for the controlled substance conviction. Defendant appeals as of right. We affirm defendant's convictions and sentences, but remand for correction of the presentence report.

The loss prevention officer of a Lowe's Home Improvement store testified that defendant entered the store and placed a drill in his shopping cart. He went to another aisle where he removed the drill from its box and stuffed it down the front of his pants. Defendant returned to the tool department and placed the empty box back on the shelf. Defendant then left the store with the concealed drill. The loss prevention officer and the store manager went outside to confront defendant. When he tried to run away, they grabbed him and a struggle ensued. During the struggle, defendant head-butted the manager, who sustained a laceration below one eye. The police arrived and eventually subdued defendant. The drill was recovered from defendant's right pants leg. As defendant was being searched, a plastic bag containing 14 folded up lottery tickets fell out of defendant's pants leg. Each of the packets contained a brown powder. The contents of one packet tested positive for heroin.

Defendant first contends that the robbery conviction was against the great weight of the evidence. A motion for a new trial may be granted where the verdict was manifestly against the clear weight of the evidence, i.e., the evidence so clearly weighed in the defendant's favor that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998); *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993).

An unarmed robbery constitutes the use of force or violence against a person “in the course of committing a larceny” of money or other property. MCL 750.530(1). An act occurs in the course of committing a larceny if it occurs in an attempt to commit the larceny, during the commission of the larceny, in an attempt to retain possession of the property, or in the escape or attempted escape after the commission of the larceny. MCL 750.530(2).

The prosecutor’s evidence showed that defendant took a drill and left the store without paying for it, then struggled with store employees in an attempt to escape after leaving the store. He threw his arms and head to try to break free and struck the store manager in the face with the back of his head. Such evidence was sufficient to sustain defendant’s robbery conviction and defendant presented no evidence to the contrary. There is nothing to indicate that the verdict was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence. *DeLisle, supra*; *People v Plummer*, 229 Mich App 293, 306; 581 NW2d 753 (1998). While there were minor discrepancies in the witnesses’ testimony, the circumstances were not so exceptional as to warrant a new trial. *People v Lemmon*, 456 Mich 625, 643-644, 647; 576 NW2d 129 (1998).

Defendant next contends that the trial court erred in failing to correct the presentence report after determining that it was inaccurate in certain respects.

If a defendant challenges the information in the presentence report and the court finds on the record that the challenged information is inaccurate or irrelevant, the presentence report must be amended and the inaccurate or irrelevant information stricken before the report is transmitted to the Department of Corrections. MCL 771.14(6). The court tacitly found that the presentence report was inaccurate in that it reflected that defendant was convicted by plea rather than by trial. The court also found that the sentencing information report, appended to the presentence report, contained an error regarding defendant’s habitual offender status. We therefore remand for the ministerial task of correcting these errors and forwarding the corrected presentence report to the Department of Corrections. *People v Russell*, 254 Mich App 11, 22; 656 NW2d 817 (2002), rev’d on other grounds 471 Mich 182 (2004); *People v Dilling*, 222 Mich App 44, 53-54; 564 NW2d 56 (1997).

Affirmed and remanded for correction of the presentence report. Jurisdiction is not retained.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto